

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOMMY ROY KEETON,

Plaintiff,

No. CIV S-04-0758 GEB EFB P

vs.

FORSYTHE, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a prisoner without counsel seeking relief for alleged civil rights violations. *See* 42 U.S.C. § 1983. On April 17, 2007, defendants Blackford, Bowers, Carroll, Cry, DeMars, Forsythe, Gust and Perez moved to dismiss this action on the ground that plaintiff failed to exhaust available administrative remedies before filing suit. *See* 42 U.S.C. § 1997e; Fed. R. Civ. P. 12(b). On December 29, 2006, the court informed plaintiff of the requirements for filing an opposition or statement of no opposition to a motion to dismiss. On June 4, 2007, the court informed plaintiff that failure to file a written opposition or a statement of no opposition may be deemed a waiver of any opposition to the motion, gave plaintiff 20 days to file an opposition or statement of non-opposition and warned him that failure to do so could result in dismissal. *See* Fed. R. Civ. P. 41(b).

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1 The 20 days have passed and plaintiff has not filed an opposition or a statement of no
2 opposition and has not otherwise responded to the June 4, 2007, order. Plaintiff has been warned
3 with specificity that he must file a response to defendants' motion. Nonetheless, he has failed to
4 comply with the order and has again violated the requirement under the Local Rule to file an
5 opposition.

6 Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.
7 *See* Fed. R. Civ. P. 41(b).

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
13 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
14 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).
15 Dated: July 30, 2007.

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18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
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